

APPEAL NO. 020233  
FILED MARCH 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 8, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first through seventh quarters because he had not made a good faith search for employment commensurate with his ability to work. He further found that the respondent (carrier) was discharged from liability for payment of any SIBs for the second through sixth quarters because the applications were not timely filed.

The claimant has appealed all determinations against him. He argues that he had no ability to work, and that his attorney failed to file SIBs applications on his behalf. The carrier responds by asking for affirmance.

DECISION

The hearing officer's decision and order are affirmed.

The claimant injured his neck on \_\_\_\_\_. Although he had worked briefly during one qualifying period, he essentially had not sought work for nearly all of the quarters in issue, contending he had not been released to return to work. He agreed that for some of the quarters, his treating doctor had actually released him with restrictions (in 1996 and 1997). He said that he had not filed his SIBs applications until August 31, 1998 (with the exception of his third quarter application which was filed on January 7, 1998), because he thought his attorney was doing this. He was not, however, paid SIBs during the pendency of the application periods. When asked if he had discussed seeking SIBs with his attorney, he said he had not but stated that this was what his former attorney was supposed to do.

The attorney is a representative of an injured worker. While there is some doubt cast by the claimant's testimony about whether the attorney was asked to file SIBs applications and failed to do this, it was the claimant who was ultimately responsible for filing his applications promptly. The hearing officer correctly held, in accordance with Section 408.143(c), that the carrier was relieved of any liability for SIBs for most of the quarters in issue.

This was a case for which all quarters in issue preceded the effective date of new administrative rules concerning SIBs good faith job search. The matter was, therefore, a fact determination for the hearing officer to evaluate whether the claimant was utterly without any ability to work at all. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v.

Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEFF AUTREY  
400 WEST 15th STREET, SUITE 200  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Michael B. McShane  
Appeals Judge

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Robert W. Potts  
Appeals Judge